

ORDINANCE NO. 553 N.S.
 AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
 AMENDING TITLE 10 OF THE MUNICIPAL CODE
 (VEGETATION) TO ESTABLISH CHAPTER 10.01
 TO REVISE AND ESTABLISH REQUIREMENTS AS THEY
 APPLY TO OAK TREE PRESERVATION

The City Council of the City of El Paso De Robles, California, does hereby ordain as follows:

SECTION I: Chapter 10.01 (Oak Tree Preservation) of the Municipal Code is created to establish grounds for the removal of oak trees, their preservation, and fines for willful destruction and/or removal, among other Oak Tree Preservation issues. This Chapter shall read as follows:

CHAPTER 10.01 - OAK TREE PRESERVATION

A. PURPOSE AND INTENT

a. It is declared that the public interest and welfare requires that the city establish a program for the preservation of Oak trees in order to maintain the heritage and character of the city of El Paso de Robles ("the pass of the Oaks") as well as preserve the beauty and identity of the community.

b. This chapter provides policies, regulations and specifications necessary to govern the preservation of Oak trees within the city and to control their removal. These provisions apply to new development, redevelopment and zone changes that could result in development of intensities that could impact existing oak trees.

c. The policies and procedures contained in this chapter apply equally to private property and to projects being pursued by public agencies, including but not limited to the City of El Paso de Robles. It shall be the City's policy to encourage other agencies to comply with these provisions even when the City does not have legal jurisdiction over the actions of that Agency.

B. DEFINITIONS:

a. Director - means the Director of the Public Works Department or his designated representative.

b. Oak tree - means any species of the "Quercus" genus having a trunk or trunks of three (3) inches diameter as measured at a point three (3) feet above the ground.

c. person - means individuals, associations, corporations, public agencies, and their agents and employees.

d. mature tree - means any Oak tree with a trunk of six (6) inches or greater diameter as measured three (3) feet above the lowest adjacent natural ground level.

e. monument tree - means any Oak tree existing within the city limits which has a trunk of thirty-six (36) inches or greater diameter as measured three (3) feet above the lowest adjacent natural ground level or has been designated as such by resolution of the City Council as having been found to be a tree of notable historic interest or association, or of high value, type or size.

f. drip line - an imaginary line extending downward from the ends of the outermost branches to the ground.

g. permit - a written authorization by the Director or the City Council that specifically designates the location, number,

type and size of oak trees that a person has permission to trim, impact in a potentially adverse manner, or remove.

h. bond - a type of financial security; equivalent forms of financial security shall be subject to approval of the Director.

i. trim - to remove a limb of an oak tree that is six (6) inches or greater in diameter as measured one foot from the trunk of a tree.

C. PERMIT REQUIRED

No person shall trim, destroy or remove any Oak tree growing on private or public property within the city limits of Paso Robles without a permit. A permit to destroy or remove an oak tree shall not be granted except as provided in this code.

D. REMOVAL OF OAK TREE - APPLICATION PROCESS

Any persons or agents of any such persons wishing to remove one or more Oak trees from any parcel in the city, shall apply in writing to the Public Works Department for a permit.

A permit application shall contain a plot plan showing the location, type and size of tree(s) proposed to be removed, a brief statement of the reason for removal, and other pertinent information that the Director may require. If the tree or trees are being proposed to be removed because of their condition, a certified arborist's determination of the state of health of the Oak tree may be required.

Except as specifically provided in this provision with regards to "Emergencies", the Director shall not be authorized to approve removal of a healthy, mature oak tree as defined by this chapter. The only Oak trees that the Director is authorized to permit the removal of, are trees that are of less than mature size or which are in the Director's judgement clearly dead or diseased beyond correction.

If a request is being made to remove one or more healthy, mature Oak trees, the Director shall prepare a report to the City Council, outlining the proposal and his recommendation, considering the following factors in preparation of his recommendation. These same factors shall be used by the Director to consider requests for removal of trees that are diseased or less than mature size.

(a) The condition of the Oak tree with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility services, and its status as host for a plant, pest, or disease endangering other species of trees or plants with infection or infestation.

(b) The necessity of the requested action to allow construction of improvements or otherwise allow reasonable use of the property for the purpose it has been zoned.

In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the Director that there are no reasonable alternatives to the proposed design and use of the property. Every reasonable effort shall be made to avoid impacting Oak trees, including but not limited to use of custom building design and incurring extra-ordinary costs to save Oak Trees.

(c) The topography of land, and the potential effect of the requested tree removal on soil retention, water retention, and diversion or increased flow of surface waters. The Director shall consider how either the preservation or removal of the Oak

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...drainage. Except as the Planning Commission and City Council shall not be disturbed. trees shall not be disturbed. the effect of the subject parcel of land will support. size, and location of existing trees as a whole. requested action on shade or a permit, the Director shall attach or recommend for City Council consideration purposes of box trees (1) and 1/2-inch trunk requiring two (2) purposes of appropriate species to be planted in a caliper measurement the applicant and may be removed, at the Director's suitable location as substitutes for preservation required, ensure that expense of location to post a tree properly established security to ensure that discretion, to post a tree properly established security to ensure that replacement trees are properly established.

In conjunction with the development or use of any property where there is a question in the mind of the Director as to possible impacts on an existing Oak tree, the Director shall require that a tree preservation security be posted, in an amount based on the valuation of the tree according to the guidelines set forth in the International Society of Arboriculturist's publication "Guide for the security value of trees and other plants". The purpose of the security is to ensure the intention to preserve trees not approved for removal.

This security shall be held for a reasonable period of time following grading or other development activity on the parcel, not to exceed three (3) years; the security trees to be preserved have not been endangered. In instances where trees shall not be removed, the Director that the security shall be approved for removal have been endangered, the security shall be applied, for the value of the destroyed tree(s), and be used for the replacement and preservation of city oak trees, as required by the Director.

APPEALS OF PERMIT DECISIONS

Notice of the Director's decision regarding Oak trees that are within his jurisdiction to approve removal shall be given by personal delivery or first class mail to the applicant and to any person filing a written request. Any such decision shall include a statement of the reason for the decision and the conditions which were attached.

The Director shall post either: 1) a "Notice of Intent" on the tree removal permit issuance, on the appeal period, and to any duration of the fifteen (15) day appeal period, intended, shall include removal proposal, the Director's intended, shall include proper procedure for formal appeal, or 2) a decision Removal Request" on the appeal, intended, shall include tentative public meeting consideration.

Any person aggrieved or affected by a decision may appeal the decision within the appeal period, intended, shall include appeal with the City Clerk to the City Council, or by an appeal fee in the City Council. If no appeal is filed, the decision shall be promptly implemented.

the permit, with or without conditions. An appeal shall automatically stay execution of the implementation of the intended decision until the appeal has been considered and decided by the City Council.

The City Clerk shall place all such appeals on the agenda of the next regular Council meeting and shall give notice to the applicant and/or appellant. The City Council shall consider and decide all issues raised in the appeal and may call for expert witness from consulting tree specialist for which the City may require to be reimbursed by the applicant. The decision of the Council shall be final.

The Planning Commission may act as an advisory committee for the Director and City Council and may, in the course of reviewing development applications before them, require that certain trees be retained and/or protected from destruction. Their decision is appealable to the City Council in the same manner as described within this chapter.

The Planning Commission shall not have the authority to approve removal of one or more mature oak trees. The Commission may, however, as part of a development review process, recommend to the City Council that the Council permit certain Oak trees to be removed. The criteria to be used by the Planning Commission in making such recommendation shall be as specified in Section "D" of these provisions.

F. EMERGENCIES

In the case of emergency caused by the dangerous condition of an Oak tree requiring immediate action for the protection of life or property, a tree may be cut down in whole or in part on the order of the Director or any on-duty member of the Police or Fire Departments. A report recording the reasons for such action may be required by the Director.

Public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California may also take such action as may be necessary to maintain a safe operation for their facilities.

G. PRESERVATION AND MAINTENANCE OF EXISTING OAK TREES

When proposed developments encroach into the drip line area of any Oak tree, special construction techniques to allow the roots to breathe and obtain water may be required by the Director with respect to any application for a building, grading or development permit. During construction, such protection measures may include, but not be limited to, installing a tree protection fence around the drip line(s) of a tree(s) to be preserved.

As a general rule, the existing ground surface within the drip line of any Oak tree shall not be cut, filled, compacted or paved. Excavation adjacent to any oak Tree shall not be permitted where, in the judgment of the Director, material damage to the root system will result. Exceptions may be approved by the Director based on qualified consultation, at the cost of the developer, resulting in reasonable assurances that the tree will not be damaged.

H. BUILDING PERMITS

When any building permit is applied for pursuant to the City Code and proposed structure would require the destruction or removal of an Oak tree, the official responsible for issuing the permit shall take in to consideration the provisions of this ordinance in the granting or denying of such permit, and the

applicant shall be required to obtain a permit in accordance with the provisions of this chapter.

In the event a permit to destroy or remove an Oak tree is issued in order to enable the applicant to carry out a development or improvement of his property, such permit shall be valid and effective only in connection with the actual accomplishment of such project.

I. SAFEGUARDING TREES DURING CONSTRUCTION

For the purpose of safeguarding Oak trees during construction, the following conditions shall apply:

(a) prior to issuance of a grading or building permit, all Oak trees on a building site shall be inventoried by the owner of such site or by the contractor as to size and location on the site. Such inventory shall be submitted to the Director, and field checked by city staff to verify the number size and location.

(b) Damage to any tree during construction shall be immediately reported to the Director by any person causing such damage, the responsible contractor, or the owner of the site, and such persons shall be required to treat the tree for such damage as specified by the Director.

(c) Oil, gasoline, chemicals and other construction materials or equipment which might be harmful to certain Oak trees shall not be stored under the drip line of the tree.

(d) Drains shall be installed according to City specifications so as to avoid harm to the Oak trees due to excess watering.

(e) Wires, signs, and other similar items shall not be attached to the Oak trees.

(f) Cutting and filling around the base of the Oak trees shall be done only after consultation with the Director, and then only to the extent authorized.

(g) No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or waste water shall be dumped on the ground or into any grate between the drip line and the base of the Oak trees, or uphill from any Oak tree where said substance might reach the roots through a leaching process.

(h) Tree protection fences (6 foot chain link with 2-inch x 8-foot posts every 10 feet) shall be installed at the dripline to prevent compaction and injury to a tree's surface roots as directed by the Director so as to prevent injury to the Oak trees making them susceptible to disease-causing organisms.

(i) Wherever cuts are made in the ground near the roots of any Oak tree, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage thereto. All cuts within the dripline of a tree are to be made by hand (no backhoes or graders).

(j) Trimming cuts one inch in diameter and over must be covered at the time the cuts are made with a tree seal pruning compound approved by the Director. All root pruning is to be done by hand.

If the Director has reason to believe that construction or development activities may endanger an Oak tree, he may seek professional consultation, at the expense of the person seeking to undertake construction or development of the property, to recommend measures necessary to safeguard the tree(s).

J. SAFEGUARDING TREES AFTER CONSTRUCTION

Oak trees required to be kept on a building site and Oak trees required to be planted as a condition of construction shall be maintained after completion of construction according to accepted arboricultural practices for the purpose of maintaining or furthering the health of such trees. The Director may require that drought resistant landscaping be installed as an alternative to irrigated landscaping where appropriate.

K. WILLFUL DESTRUCTION OR ENDANGERMENT OF OAK TREES

It shall be unlawful for any person to willfully destroy, mutilate, poison, or attempt to kill an Oak tree in the City of Paso Robles. Any action that would endanger an Oak tree and that results in its destruction shall be subject to the same penalties as removal without authorization. The persons or party responsible for willfully causing the destruction or removal of an oak tree shall be held responsible for the payment of any penalties in conjunction with its removal.

The Director may however approve trimming for the benefit of the Oak tree or to remove limbs hazardous to persons or property, or which limbs substantially interfere with the reasonable use and enjoyment of property and such trimming of interfering limbs can be accomplished without danger to the Oak tree. Such trimming shall be subject to written permission of the Director and shall be accomplished by qualified persons and in a manner to be approved by the Director.

L. ENFORCEMENT

The Director shall be responsible for the enforcement of this chapter. The Community Development Department may accept applications for tree removal in conjunction with building permits, and process them through the Public Works Department.

If a request for a tree removal is received as part of a new subdivision or property development proposal, within the range of his authority the Director may grant permission for tree removal in those situations that are within his authority and make recommendations for City Council consideration where the request exceeds his authority to approve.

M. VIOLATION - PENALTY

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor for violation of the Municipal Code, and also an infraction for the removal or destruction of each and every Oak tree.

Any person convicted of an infraction for a violation of any portion of this chapter of Municipal Code is punishable by a fine or fines the amount of which would be determined based on the valuation of trees according to the guidelines set forth within the International Society of Arboriculturist's publication of "Guide for establishing value of trees and other plants" up to an amount not to exceed \$25,000 per tree, or as otherwise established in a fee schedule adopted by resolution by the City Council.

In instances of additional violations beyond the first infraction, the amount of the infraction fine shall be doubled (two times the infraction fine amount that would be applicable under the "Guide", up to an amount not to exceed \$50,000).

These fines may be levied in full or in part as deemed necessary by a court of law.